

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FREEDOM FROM RELIGION
FOUNDATION, INC.,
STEPHEN MEHOLIC, DAVID SIMPSON,
JOHN BERRY, AND CANDACE WINKLER,

Plaintiffs,

vs.

THE COUNTY OF LEHIGH,

Defendant.

CIVIL ACTION NO.: 5:16-cv-04504

PLAINTIFFS' CONCISE STATEMENT OF MATERIAL FACTS

The Origins of the Lehigh County Seal

1. On December 28, 1944, Lehigh County adopted an "Official Shield and Coat of Arms of Lehigh County." (Pl. Ex. A, Dec. 28, 1944 Official Minutes of Commissioners of Lehigh County; Pl. Ex. K, Deposition of Brad Osborne as Rule 30(b)(6) representative of the County, 11:6-17).

2. The adoption of the Official Shield and Coat of Arms occurred at a meeting of the Commissioners of Lehigh County, which was attended by Commissioners Good, Schellhamer, and Hertzog. (Pl. Ex. A, 1).

3. A color print of the approved Official Shield and Coat of Arms was included in the Official Minutes. (Pl. Ex. A, 1; Pl. Ex. B, Notes and print of County Seal, 2).

4. This Official Shield and Coat of Arms remains the official County Seal today. (Pl. Ex. K, 9-10).

5. The original color print of the Official Shield and Coat of Arms in the Official Minutes of Lehigh County (hereinafter the “County Seal”) is set forth below:



(Pl. Ex. B, 2).

6. The Board of Commissioners of Lehigh County have the authority to create or modify the official seal of the County. (Pl. Ex. K, 15:3-7).

7. The Lehigh County administration has the authority to replicate and place the County Seal throughout the County. (Pl. Ex. K, 17:25-19:10).

The Design of the Lehigh County Seal

8. The County Seal includes a large, yellow Latin cross in the middle of the Seal, with a building superimposed upon the bottom portion of the cross. (Pl. Ex. B; ECF No. 6 ¶ 15).

9. The Latin cross is a symbol of Christianity. (ECF No. 6 ¶ 19).

10. A copy of the Proceedings of the Lehigh County Historical Society from August 1946 indicates that the County Seal was designed by County Commissioner Hertzog. (Pl. Ex. C, Volume Fifteen (August 1946) Proceedings of the Lehigh County Historical Society) (“August 1946 Historical Society Proceedings”).

11. In the August 1946 Historical Society Proceedings, Commissioner Hertzog describes the symbolic significance of each of the elements appearing on the County Seal. (Pl. Ex. C, 2-3).

12. According to Commissioner Hertzog, the “huge cross in canary-yellow signif[ies] Christianity and the God-fearing people which are the foundation and backbone of [Lehigh] County.” (*Id.* at 2).

13. The building superimposed over the bottom of the huge canary-yellow cross is the “historical and beautiful old Court House.” (*Id.* at 2-3).

14. The other features of the County Seal surrounding the Latin cross and superimposed courthouse represent various aspects of Lehigh County. (*Id.*) (red heart is the emblem of Allentown; two books with the lamp of learning represent the County education system; red buntings represent clothing manufacturing industries in the County; bison represents hoof animals protected by County Preserve; cement silos represent the cement industry in the County; other buildings represent diversified industries of the County; and agricultural symbolism represents the agricultural industry of the County).

15. A variety of slightly different depictions of the County Seal have been used, sometimes in black and white and other times in different colors, but the County is aware of no

official County actions taken to vary the appearance of the County Seal. (Pl. Ex. D, Def. Answers to Plaintiffs' Interrogatories ¶ 2; Pl. Ex. E, Depictions of the County Seal).

Modern Uses of the County Seal

16. Today, a digitized version of the County Seal is present on the header of the Lehigh County website. (Pl. Ex. F, Lehigh County Homepage). Because the County Seal is present on the website header, it is visible on any of the various links to other sections of the County website. (Pl. Ex. G, Deposition Transcript of Plaintiff Candace Winkler, 18:11-13).

17. The version of the County Seal used on the website is blue, black, and white. (Pl. Ex. F).



18. In addition to the Lehigh County website, the County Seal is used on a variety of county documents, including property tax paperwork. (Pl. Ex. O, Collection of County Forms bearing County Seal; Pl. Ex. G, 9:4-23; Pl. Ex. I, Deposition of Plaintiff David Simpson, 11:2-5).

19. The County Seal is also located on various County vehicles (Pl. Ex. E, 3; Pl. Ex. J, Deposition of Plaintiff John Berry, 10:13-25).

20. The County Seal is also displayed at a number of different locations, including the County Government Center, County Courthouse, signage of a nature preserve in the County, signage of parks in the County, a previously-operational juvenile detention facility in the County, the Coroner's building, and the prison in the County. (Pl. Ex. D ¶ 4).

21. A County Seal measuring several feet in diameter is displayed in the Public Hearing Room within the Government Center, which is where meetings of the Lehigh County Board of Commissioners are held, behind where the commissioners sit. (ECF No. 6 ¶ 26; Pl. Ex. H, 5:8-9, 6:2-7; Pl. Ex. E).

22. The County Seal has also been displayed on numerous television monitors present in the Public Hearing Room during meetings of the Lehigh County Board of Commissioners. (Pl. Ex. H, Deposition of Plaintiff Stephen Meholic, 6:15-25).

The County Flag

23. At the December 28, 1944 Commissioners meeting when the County Seal was adopted, the Commissioners also agreed to enter into a contract for the purchase of one county flag that would include a reproduction of the County Seal. (Pl. Ex. A, 2).

24. The modern representation of the County's flag contains a multi-colored version of the County Seal (the "County Flag").



25. The County Flag is displayed at numerous locations throughout the County, including the Lehigh Valley International Airport, the Work Release Center, a detox center, Cedarbrook Nursing Home, Iron Pigs Stadium, Velodrome, nature preserve, CedarView Apartments, Agricultural Preservation Building, Juvenile Detention facility, Coroner's Building, Government Center, County Courthouse, prison, Lehigh Valley Planning Commission, and Lehigh and Northampton Transportation Authority. (Pl. Ex. D ¶ 7).

Plaintiffs' Unwelcome Contact with the County Seal

26. Plaintiff Stephen Meholic lives in Lehigh County in the borough of Macungie. (Pl. Ex. H, 4:8-10).

27. Meholic is a member of Freedom From Religion Foundation. (*Id.* at 12:10-12).

28. Meholic has had frequent contact with the County Seal while attending County Commissioners' meetings, both on the wall behind the Commissioners and on the television screens in the Public Hearing Room. (*Id.* at 5-6).

29. Meholic has also encountered the County Seal at the Lehigh Valley Airport. (*Id.* at 7:22-8:4).

30. Meholic has also encountered the County Seal when he visits the County website, which he does to find agendas of County Commissioners' meetings. (*Id.* at 8:16-8:24).

31. Meholic has also encountered the County Seal on County documents, such as freedom of information act forms. (*Id.* at 8:25-9:2).

32. Meholic plans to have contact with the Seal in the future because he plans to attend the future County Commissioners' meetings. (*Id.* at 9:3-7).

33. Meholic is not affiliated with any religion or faith and identifies as an atheist. (*Id.* at 4:18-22).

34. Meholic finds the cross offensive because it does not represent him and objects to feeling as though the County is trying to force religion on him. (*Id.* at 9:18-20).

35. Meholic views the County's inclusion of the cross as an official endorsement of religion by the County and does not believe it belongs on the County Seal. (*Id.* at 10:2-7).

36. In late 2015, Meholic made a presentation at a County Commissioners' meeting in which he requested that the County Commissioners change the design of the seal. (*Id.* at 11:5-7).

37. Meholic also provided information supporting his request to the Commissioners and made attempts to meet with each of the Commissioners to discuss the matter. (*Id.* at 11-16).

38. Meholic relayed that per the 2010 census, 49 percent of the County reported no religious affiliation and that the Latin cross does not fit the Lehigh County community. (*Id.* at 15-16).

39. Meholic never received a response to his request. (*Id.* at 13:17-18).

40. David Simpson lives in Lehigh County in the borough of Emmaus. (Pl. Ex. I at 4:8-9).

41. Simpson is a member of Freedom From Religion Foundation. (*Id.* at 6:1-3).

42. Simpson first encountered the County Seal when he went to the Lehigh County Sheriff's Office, located within the County courthouse, to obtain a license to carry a firearm, which he must do every five years. He noticed that the County flag contained a large "Christian cross in the middle." (*Id.* at 7:21-8:15, 10:25-11:1).

43. Simpson has encountered the County Seal when conducting personal affairs that require him to utilize the County website, such as obtaining copies of his marriage certificate. (*Id.* at 10:11-17).

44. Simpson has also encountered the County Seal when handling his personal taxes because the envelope containing his tax information bears the County Seal. (*Id.* at 11:2-5).

45. Simpson encounters the County Seal when he is required to report to the County courthouse for jury duty. (*Id.* at 12:8-13).

46. Simpson identifies as an atheist and is not affiliated with any religion or faith. (*Id.* at 5:12-16).

47. Simpson finds the presence of the Latin cross on the County Seal to be offensive. (*Id.* at 13:18-20).

48. Simpson interprets the presence of the Latin cross on the County Seal as the County's endorsement of Christianity because, in his experience, the cross is a symbol that mostly represents Christianity. (*Id.* at 9:2-10).

49. Simpson finds the inclusion of the Latin cross on the County Seal to be offensive because he believes “in the separation of church and state” and that the principle of separation of church and state was “the intention of our founding of the country.” (*Id.* at 13:18-14:2).

50. Each time he sees the County Seal, Simpson also worries that he may be discriminated against by the County because of his atheism. (*Id.* at 14:9-15:9).

51. Each time Simpson sees the Seal, he worries about being discriminated against when conducting his affairs through the County. (*Id.* at 14:9-15:12).

52. Simpson is a property owner in Lehigh County and receives yearly tax bills in connection with the property he owns. (*Id.* at 13:8-16).

53. John Berry lives in Lehigh County in the borough of Emmaus. (Pl. Ex. J 4:21-22).

54. Berry is a member of Freedom From Religion Foundation. (*Id.* at 7:8-10).

55. Berry works in a Lehigh County building. (*Id.* at 8:20-21).

56. Berry has had contact with the County Seal because the Seal is located on County vehicles that service his work building. (*Id.* at 10:13-25).

57. Berry has also seen the County Seal at the Lehigh County courthouse on the County flag, and in the County’s public hearing room behind where the commissioners sit. (*Id.* at 11:19-25).

58. Berry has encountered the County Seal on the Lehigh County website, which his job requires him to utilize. (*Id.* at 12:11-19).

59. Berry has also come into contact with the Seal when he has had to report for jury duty at the courthouse. (*Id.* at 15:18-21).

60. Berry will continue to encounter the County Seal on the Lehigh County website because his job requires him to use the website. (*Id.* at 13:10-14).

61. Furthermore, Berry's local supervisor encourages him to attend commissioner meetings held in the County commissioner's room at the County courthouse to share what he is doing for the county. (*Id.* at 13:18-14:3).

62. Berry is a non-practicing Methodist. (*Id.* at 6:18-25).

63. Berry finds his contact with the County Seal unwelcome because it contains a Christian cross and "represents an endorsement of a Christian religion," and Berry thinks "that's a little bit too narrow of a focus. [He doesn't] think a government entity should be endorsing any religion." (*Id.* at 17:18-21).

64. Berry believes the Latin cross on the County Seal endorses, accepts, and promotes Christianity. (*Id.* at 18:2-9).

65. Berry finds this contact unwelcome and offensive because seeing the Seal reminds him that he pays taxes to a government entity that supports a particular religion. (*Id.* at 22:4-6).

66. Berry believes the Latin cross is especially prominent on County flags because of the contrast in colors. (*Id.* at 22:13-18).

67. Berry does not believe the Latin cross can be intended to represent the Christians that settled the Lehigh Valley because those settlers were Moravians, and Berry understand Moravians to promote religious tolerance without the use of a cross in their services. (*Id.* at 23:12-24).

68. Candace Winkler lives in Lehigh County in the borough of Catasauqua. (Pl. Ex. H, 4:9-13).

69. Winkler is a member of Freedom From Religion Foundation. (*Id.* at 6:18-20).

70. Winkler first encountered the County Seal when she received a 2015 real estate tax bill because the County Seal was on the letterhead of the assessment. (*Id.* at 9:4-23).

71. Winkler is pursuing a real estate career and encountered the County Seal while looking up property assessments and tax values because the County Seal was at the top of the County website. (*Id.* at 5:6-10; 18:1-14).

72. Winkler lives near the Lehigh Valley Airport and routinely drives by the airport where she encounters the County Seal quite clearly emblazoned on the flag. (*Id.* at 16:3-9; 17:7-11).

73. Winkler believes the Latin cross is especially prominent on County flags because of the contrast in colors. (*Id.* at 16:2-9).

74. Winkler is not affiliated with any religion or faith, and identifies herself as an “anti-theist” because she feels that religion is damaging and life would be better for humans without religion. (*Id.* at 5:17-6:5).

75. Winkler has a problem with the presence of a religious symbol on the County Seal because she wishes to avoid the Christian church and looks to her government to protect her from it. (*Id.* at 14-15).

76. Winkler sees the Latin cross in the County Seal as irritating because it reminds her of abuse by the Christian church. (*Id.* at 17:18-20).

77. Winkler also finds the County Seal inappropriate because, to her, it normalizes Christianity at taxpayer-funded events. (*Id.* at 26:1-5).

Freedom From Religion Foundation’s Request for a New Seal

78. On November 5, 2014, the Freedom From Religion Foundation (FFRF) sent a letter to Lehigh County Executive Thomas Muller raising concerns regarding the County Seal.

(Pl. Ex. L, November 5, 2014 Letter from FFRF to Lehigh County) (the “November 2014 Letter”).

79. Specifically, FFRF stated the inclusion of the Latin cross on the County Seal “violates the Establishment Clause of the First Amendment” and urged the County to immediately discontinue its use of the Seal. (*Id.*).

80. FFRF also requested a written response outlining the steps the County would take to comply with the “constitutional dictates” of the Establishment Clause. (*Id.*).

81. On January 16, 2015, FFRF sent a second letter to Mr. Muller following up on the November 2015 Letter. (Pl. Ex. M, January 16, 2015 Letter from FFRF to Lehigh County) (the “January 2015 Letter”).

Lehigh County’s Vote to Retain the County Seal

82. The County claims it did not receive FFRF’s November 2014 Letter. (Pl. Ex. K, 20:18-21:12).

83. The County did receive FFRF’s January 2015 Letter. (*Id.* at 22:3-6).

84. After receiving the January 2015 Letter, the Board of Commissioners sought to gather information pertaining to the historical background of the County Seal and understanding the nature of FFRF’s complaint and the purpose of the complaint. (*Id.* at 23:2-24:5).

85. The Board of Commissions contacted the Lehigh County Historical Society and had its solicitor do research on the County Seal. (*Id.* at 30:3-8).

86. The County takes the position that the Latin cross was placed on the seal for the secular reason of honoring the original settlers of Lehigh County who were Christian. (*Id.* at 30:12-18, 37:2-5, 43:19-44:4; Pl. Ex. N, March 25, 2015 Lehigh County Board of Commissioners Minutes, 13). The County also maintains that the Latin cross represents historical

significance in the form of “what the early settlers found important in their lives as they settled the area back in the 1700s.” (Pl. Ex. K, 45:15-23).

87. The County reached this conclusion based upon the August 1946 Historical Society Proceedings, in which County Commissioner Hertzog states “the huge cross in canary-yellow” signifies “Christianity and the God-fearing people which are the foundation and backbone of [Lehigh] County.” (Pl. Ex. K, 31-32, 34:8-17, 45:24-46:8; Pl. Ex. C, 2).

88. The County acknowledges that the August 1946 Historical Society Proceedings do not state the Latin cross was included in the County Seal to honor the original Christian settlers of Lehigh County. (Pl. Ex. K, 33:14-34:7).

89. The County has not located any other documents to support its claim that the purpose of the cross in the County Seal is to honor the original settlers of Lehigh County, who were Christian. (*Id.* at 37:6-10).

90. The County reached its conclusion as to the purpose of the inclusion of the Latin cross based upon how it “processed the information” in the August 1946 Historical Society Proceedings. (*Id.*)

91. On March 25, 2015, the Commissioners voted to retain the County Seal. (*Id.* at 25-27; Pl. Ex. N, 1-2).

92. The Commissioners also presented and voted on a draft of a letter to be sent in response to FFRF’s complaint. (Pl. Ex. N, 12).

93. The letter approved by the Commissioners contained a slight change to the language of the draft letter based upon public comment. (Pl. Ex. N, 1, 12-13; Pl. Ex. K, 39:18-40:23).

94. The County maintains its position set forth in its March 25, 2015 letter to FFRF.
(Pl. Ex. K, 46:12-20).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2017, the foregoing **PLAINTIFFS' CONCISE STATEMENT OF MATERIAL FACTS** was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic case filing system and constitutes service of this filing under Rule 5(b)(2)(E) of the Federal Rules of Civil Procedure. Parties may access this filing through the Court's ECF system.

/s/ Marcus B. Schneider, Esquire
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